IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-1104

TOM ADAMS AND J. W. DEFOOR, *Petitioners,*

v.

JOE REIMER, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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January 1979

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INDEX

CITATIONS

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TOM ADAMS and J. W. DeFOOR petition for a writ of certiorari to review that portion of the judgment of the United States Court of Appeals for the Fifth Circuit entered in this case August 21, 1978, insofar as it reverses in part the judgment of the United States District Court for the Southern District of Texas, Houston Division; renders judgment for Respondent, JOE REIMER, in part as to liability; and remands the case in part for a determination of damages.

OPINION BELOW

The opinion of the court of appeals is reported as *Reimer v. Short,* 578 F.2d 621 (5th Cir. 1978) and

appears as Appendix A, *infra*. The District Court of the Southern District of Texas, Houston Division, did not render an opinion.

JURISDICTION

The judgment of the panel of the court of appeals was dated August 21, 1978, and entered on that date. (Appendix B, *infra*) Petitioners' Request for Extension of Time in which to File Motion for Rehearing was granted by order dated September 5, 1978, extending the time for said filing to September 11, 1978. (Appendices C and D, *infra*). The Petition for Rehearing was physically filed in the court of appeals by the attorney for Petitioners on September 11, 1978. The petition for rehearing was denied by order dated October 18, 1978. (Appendix E, *infra.*) The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) (1966).

QUESTIONS PRESENTED

1. Whether the court of appeals erred in holding, as a matter of law, that Petitioners failed to act in reasonable good faith when they failed to turn Hubbard's truck over to Reimer immediately upon Reimer's presentation of the district court's "minute entry."

2. Whether after refusing to set aside Reimer's state court conviction for theft of the truck under his nolo contendere plea, the court of appeals erred when it held as a matter of law that Reimer was unreasonably deprived of *his* property, thus in effect holding that a thief acquires a property right in stolen property.

3. Alternatively, whether the court of appeals erred in failing to set forth a proper measure of damages due a thief for deprivation of his ill gotten gains.

4. Whether the court of appeals erred in holding as a matter of law that the "stop order" put on the truck's title by Petitioners prevented the transfer of the vehicle.

5. Whether the court of appeals erred in holding Petitioners liable, as a matter of law, for the deprivation of Reimer's property after January 8, *1973*, when it is undisputed and the court itself recited that the first contact the police department had with the truck was in September 1973.

STATUTES INVOLVED

1. 42 U.S.C. § 1983 (1974) provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress.

2. TEX CODE CRIM. PROC. ANN. art. 47.01 (1966) provides:

> An officer who comes into custody of property alleged to have been stolen must hold it subject to the order of the proper court or magistrate.

3. TEX. CODE CRIM. PROC. ANN. art. 47.02 (1966) provides:

> Upon the trial of any criminal action for theft, or for any other illegal acquisition of property which is by law a penal offense, the court trying the case shall order the property to be restored, to the person appearing by the proof to be the owner of the same.
>
> Likewise, the judge of any court in which the trial of any criminal action for theft or any other illegal acquisition of property which is by law a penal offense is pending may, upon hearing, if it is proved to the satisfaction of the judge of said court that any person is a true owner of the property alleged to have been stolen, and which is in possession of a peace officer, by written order, direct the property to be restored to such owner.

STATEMENT OF THE CASE

Preliminary Statement

This lawsuit stems from the theft of a truck belonging to a Mr. John Hubbard, the subsequent impoundment by a detective in the Houston Police Department's Auto Theft Division of a hybrid truck which Respondent Joe Reimer alleges he owned and used in his auto salvage yard, and the filing of criminal charges in state court against Reimer for the theft of Hubbard's truck.

In response to the theft charges Reimer brought this civil rights action for injunctive relief under 42 U.S.C. § 1983 (1974) against Herman Short, then Chief of the Houston Police Department, and Petitioners Tom Adams and J. W. DeFoor, two detectives in the Auto Theft Division.

Reimer filed the suit pro se in the United States District Court for the Southern District of Texas, Houston Division, seeking the return of the seized truck, its suppression as evidence in the state criminal case against him, and damages. Alleging that he had been the victim of police "harrassment" and "unlawful searches and seizure" (R. 1 as amended at R. 16), Reimer was partly successful: He obtained a copy of a minute entry in which the federal district court granted his motion for the truck's return, using it to regain possession of the truck and temporarily persuade the state criminal court to suppress the truck as evidence against him in the theft case.

Reimer was represented by counsel at trial in the civil rights action. The first trial ended in a mistrial; the second in a jury verdict for Detectives Adams and DeFoor. The trial court accordingly rendered judgment that Reimer take nothing by his suit against Petitioners. (R. 38) (Chief Short had previously been dismissed as defendant on his motion for directed verdict, and Reimer's motion for leave to amend so as to include the City of Houston was denied.) (R. 15, 38)

Affirming in part, the United States Court of Appeals for the Fifth Circuit refused Reimer's pro se prayer for reversal of his intervening state automobile theft conviction under a nolo contendere plea, for reinstatement of Chief Short and the addition of the City of Houston as defendants in the civil rights action, and for reversal of the jury's verdict for the detectives as to the searches of Reimer's auto salvage yard and seizure of the hybrid truck.

The court of appeals concluded that the Petitioners "could well have believed" the truck was stolen when they seized it. The court went on to hold, however, (Circuit Judge Jones dissenting) that as a matter of law certain actions on the part of the Petitioners in connection with the return of the truck, while the state theft case was pending, unreasonably deprived Reimer of *his* property. (See Appendix A, *infra*) The court of appeals reversed the judgment rendered on the verdict as to this portion of the case and remanded it to the trial court for a determination of damages.

Statement of Facts Relevant to Issues Sought to Be Reviewed

The State Theft Case Against Reimer

Hubbard's truck was reported stolen on March 14, 1973. (Tr. I, Pg. 48, L. 19-21). On September 10, 1973, Adams seized a truck as part of a theft investigation he was conducting with DeFoor and impounded it in the City's storage facility. (Tr. I, Pg. 76, L. 18-25; Tr. I, Pg. 77, L. 1-3). Adams testified the truck was a 1972 metallic blue Ford custom pick-up with a 1970 model Ford frame. (Tr. I, Pg. 17, L. 14-20; Tr. I, Pg. 20, L. 9-11). Adams testified he found Reimer's name stamped on the frame when he examined it in order to identify the truck and that he had never contended that the frame itself was stolen. (Tr. I, Pg. 20, L. 19-22; Tr. I, Pg. 21, L. 2-5). About three weeks later, Hubbard identified the seized truck as his, except for the frame. (Tr. I, Pg. 89, L. 22; Tr. I, Pg. 90, L. 24).

Adams filed the theft charges against Reimer on October 5, 1973. (Tr. Supp. IV, Pg. 33, L. 13-14). The

Harris County, Texas, grand jury returned an indictment against Reimer for auto theft on January 8, 1974. (Tr. Supp. IV, Pg. 263, L. 13-22). On March 12, 1974, however, Reimer obtained an order from the state trial judge suppressing the truck as evidence against him. The state suppression order was issued on the strength of the federal court's minute entry granting Reimer's "Motion for the Return of the Seized Property and the Suppression of Evidence." The state suppression order was later withdrawn after the federal court clarified its minute entry to indicate that it was not intended to require suppression of the truck as evidence but only its return.

Following the trial of the civil rights suit, Reimer was convicted in state court of the theft and received a ten-year sentence. (Appendix "A," Pg. 45, Appellees' Brief in the United States Court of Appeals for the Fifth Circuit) He obtained a new trial on the ground of newly discovered evidence, whereupon he then entered a nolo contendere plea to a Class "A" misdemeanor auto theft charge and received a thirty-day jail sentence. (Exh. "N," Appellant's Supplemental Brief in the United States Court of Appeals for the Fifth Circuit)

Reimer's Civil Rights Action to Regain Possession of the Evidence in the Criminal Case Against Him

Reimer filed his civil rights action in federal court on October 10, 1973—five days after the auto theft charges were filed against him. (R. 1) On October 26, 1973, in federal court, Reimer filed a "Motion for the Return of Seized Property and the Suppression of Evidence" concerning a 1970 Ford pickup and other items taken in the seizure. (R. 2) Petitioners filed their answer denying the substance of the allegations on November 5, 1973.

(R. 3) In late November Reimer filed a brief in support of his motion, attaching as an exhibit a transcript of testimony in the state court proceeding. Although the court's subsequent minute entry stated that Petitioners had failed to advise the court of any reason why they continued to hold the truck, the transcript attached to Reimer's motion reflected that the state judge was referring the case to the grand jury. (R. 4, 5)

On January 7, 1974, the federal district court (Hon. John V. Singleton, Jr.) granted a portion of Reimer's "Motion for the Return of the Seized Property and the Suppression of Evidence." The court's minute entry referred to "one 1970 Ford Pick-up Truck with serial numbers F10GKH11749 and F10GKP62670 taken from 4413 Dunn St., Houston, Texas, on September 10, 1973, by one Tom Adams." (See Appendix F, *infra*) The court denied Reimer's motion in all other respects. (R. 5)

The case proceeded to trial. The first trial of this action resulted in a mistrial. The jury returned a verdict for Petitioners in the second. (R. 38)

The Circumstances Surrounding the Return of the Evidence To Reimer

The court of appeals reversed the jury's verdict for Petitioners with respect to their conduct after notice of the minute entry dated January 7, 1974.

Both Petitioners testified at trial concerning the circumstances surrounding the return of the evidence. DeFoor testified that Reimer came to his office on either January 8 or January 11, 1974, and showed him "a wadded up xerox copy of what appeared to be an order." (Tr. I, Pg. 96, L. 10-11) DeFoor could not read the

signature. (The court's minute entry and the judge's script signature are reproduced in Appendices F and G, *infra*.) DeFoor did not turn the truck over to Reimer in part because he "could not believe the thief was going to give [him] an Order to give him back the evidence . . . . [He] could not believe [the] Court would send in an Order releasing the property." (Tr. I, Pg. 96, L. 15-18) He refused to release the truck until he checked with the City of Houston's Legal Department. The Legal Department responded initially that they had not received notice of a hearing concerning the release of the truck. They advised him to wait while they investigated the circumstances and filed a motion to stay the order. (Tr. I, Pg. 97, L. 2-9) Lieutenant Storemski, Petitioners' superior, testified they wanted to check with the Legal Department about the proper way of serving a federal court order because "it just didn't look official." (Tr. Supp. IV, Pg. 56, L. 8-20)

Adams testified that DeFoor called him on his day off and told him that Reimer had appeared at their office with an order for the return of a truck. (Tr. I, Pg. 33, L. 4-8) Adams stated that the description in the order did not match either the place of the truck's seizure or the features of the truck itself. (Tr. I, Pg. 32, L. 8-11, 14-21).

On January 11, 1974, Petitioners filed a motion to vacate the order for the return of seized property on the ground that Reimer had been indicted on January 8, 1974, for automobile theft and that the seized property was vital evidence in the cause then pending in the 174th District Court, Harris County, Texas. (R. 6) That same day Reimer filed a motion to have Petitioners show cause why they should not be held in contempt for failure to return the truck pursuant to the court order issued four

days earlier. (R. 7) After Petitioners' attorney assured the trial court that the truck would be returned, the trial judge treated as moot both Petitioners' motion to vacate the order and Reimer's contempt motion. (R. 15)

Petitioners delivered the VIN plate F10GKP62670 to Reimer at the beginning of the contempt hearing on August 23, 1974. The contempt motion was denied. (R. 25)

Adams testified that the VIN plate F10GKP62670 did not belong on that truck body (Tr. I, Pg. 34, L. 20-21), although it "was once crudely attached with used rivets to the seized vehicle, with the legal VIN plate F10YKM-87824 having been removed prior to seizure, and . . . that VIN plate F10GKP62670 was not intentionally removed from the seized vehicle or intentionally withheld . . ." by him. (R. 22) He also testified at the trial that the plate popped off the left door when he examined it—an indication that it had been tampered with. (Tr. I, Pg. 23, L. 1-6, 11; Tr. I, Pg. 26, L. 7-10) Although he inquired where it was, Reimer had not expressly asked for its return. (Tr. I, Pg. 34, L. 10-14) Petitioners and Reimer were all aware that possession of the truck without the original plate was illegal under Texas law.

Reimer filed one final contempt motion, alleging he had sold the truck and been forced to buy it back because a "stop order" had been placed on the title registration. (R. 36) Adams testified that stops had been placed on the titles of the trucks which had been used to make up the seized truck. (Tr. I, Pg. 36, L. 4-13; Tr. I, Pg. 98, L. 21) so as to prevent Reimer from disposing of the stolen truck (Tr. I, Pg. 40, L. 2) before the criminal case was disposed of. (Tr. I, Pg. 100, L. 5)

The court denied this motion. (R. 38) Mr. J. R. Honeycut, Registration Supervisor for the Texas Highway Department's Motor Vehicles Division testified that the title application had been returned for additional evidence and even if the stop order were acted upon they would merely delay the processing of the application for five days if they did not receive a court order or injunction. (Tr. Supp. IV, Pg. 78, L. 21 - Pg. 79, L. 3; Tr. Supp. IV, Pg. 79, L. 14 - Pg. 80, L. 2)

REASONS FOR GRANTING THE WRIT

1. The court's holding encourages one charged with theft to use the federal courts to unduly interfere with the state's criminal prosecution and disposition of stolen property and is therefore contrary to the doctrine of *Younger v. Harris* and its progeny.

The court's holding is in conflict with the doctrine of *Younger v. Harris,* 401 U.S. 37 (1971) which prohibits federal interference in pending criminal prosecutions in the absence of extraordinary circumstances such as a threat of irreparable injury which is both great and immediate or a showing that the prosecution was initiated for purposes of harassment or in bad faith.

The facts of this case fall well within this rule. Reimer filed his civil rights action in response to Petitioners' filing of criminal charges and seizure of the truck. Although Reimer alleged harassment and bad faith, the federal district court made no finding that the filing of criminal charges and seizure of the property alleged to be stolen were in bad faith.

Reimer did not prevail on the issue of harassment and bad-faith prosecution in either the trial court or the court

of appeals. The court of appeals held merely that Petitioners failed to act in reasonable good faith in connection with the court's order for the truck's return. But without a showing of bad faith in the initiation of the criminal charges and seizure of the evidence, there was no justification for the federal court's intervention in the first place. *Kugler v. Helfant*, 421 U.S. 117 (1975); *Perez v. Ledesma*, 401 U.S. 82 (1971).

As stated in *Younger* the sources of the policy against federal intervention in state criminal proceedings are (1) the doctrine that a court of equity will not act when the moving party has an adequate remedy at law and (2) the doctrine of abstention on the grounds of comity and federalism so as to avoid undue interference with the state's legitimate interest in the administration of its criminal laws.

Both considerations are present in this case. Under TEX. CODE CRIM. PROC. ANN. art. 47.02 (1966) the state court must, in conjunction with the disposition of the criminal case, order the return to the true owner of property alleged to have been stolen. This determination concerning the evidence in the criminal case should have been left to the state court.

The district court's order for the return to the accused of property alleged to have been stolen was an undue interference with the state's legitimate interest in the administration of its criminal laws and thus contrary to the doctrine in *Younger*. Petitioners submit that their conduct in complying with an order improperly interfering in the state's administration of its criminal laws could not have been unreasonable as a matter of law and cannot provide a basis for damages under 42 U.S.C. § 1983.

2. The holding of the court that as a matter of law Petitioners failed to act in reasonable good faith in returning the truck to the accused pursuant to the federal district court's minute entry is in conflict with Texas law which requires an officer having custody of property alleged to have been stolen to hold it subject to the order of the state court in which the criminal case is pending.

Under TEX. CODE CRIM. PROC. ANN. arts. 47.01 and 47.02 (1966) an officer in possession of property alleged to have been stolen must hold it subject to a determination by the state court as to its true owner. The state court in which the criminal charge is pending or which is trying the case must order the return of the property to the true owner either upon hearing or upon trial of the criminal case.

Petitioners were thus required by state law to hold the evidence subject to the order of the state court. Their failure to return the evidence to the accused until they had consulted their attorneys, their filing of a motion to vacate the federal court order, and their later attempts to prevent disposition of the stolen property by the accused cannot be deemed unreasonable as a matter of law.

3. The holding of the court that Reimer was unreasonably deprived of *his property* and its remand of the case for a determination of damages is in conflict with Texas law and public policy that a thief does not acquire a property right in the stolen goods and should not be permitted to profit from his ill gotten gains.

The holding of the court of appeals improperly assumes Reimer's right to the truck. In addition to Pe-

titioners' argument, *supra,* that it was for the state court to determine the proper disposition of the truck, they alternatively argue that there was ample evidence in the record that portions of the hybrid truck were stolen and did not belong to Reimer.

Under Texas law a thief, or a purchaser from him, acquires no title or right to possession of a stolen vehicle as against one in rightful possession. *McKinney v. Croan,* 144 Tex. 9, 188 S.W.2d 144 (1945); *Beauchamp v. Nichols,* 278 S.W.2d 535 (Tex. Civ. App.—Amarillo 1954, no writ). In *Southwestern Bell Telephone Co. v. Commercial Metals Co.,* 389 S.W.2d 116 (Tex. Civ. App.—Houston 1965, no writ) it was held that one holding property for the purpose of using it as evidence in a criminal case is in lawful possession—at least until the case is disposed of. (If the Court deems that this issue has not been finally determined in Texas, it would be inappropriate for a federal court to decide it contrary to the only Texas decision existing.)

Having first been convicted of theft of the truck and later having entered a nolo contendere plea to the charge, Reimer should not be permitted to profit from his admittedly ill gotten gains.

4. The holding of the court of appeals conflicts with an earlier decision of another panel of the same court of appeals.

In *Snell v. Short,* 544 F.2d 1289 (5th Cir. 1977), another panel of the court of appeals held in a similar § 1983 civil rights action by one accused and later convicted of robbery that under TEX. CODE CRIM. PROC. ANN. art. 47.01 (1966) an officer in possession of

property alleged to have been stolen cannot release it except upon order of the proper court. The court further held that a conversion action could accrue only after the police lost the protection of article 47.01 and demand had been made *by the owner.*

TEX. CODE CRIM. PROC. ANN. article 47.02 (1966) directs the state criminal court to restore property alleged to have been stolen to the true owner either upon hearing or upon trial of the criminal case. Petitioners argue that under Texas law as applied in *Snell* they could not legally turn the property over to anyone but the true owner as determined by the state criminal court pursuant to article 47.02.

Alternatively, should Petitioners be deemed to have lost the protection of article 47.01, they argue that under Texas law, as applied in *Snell,* Reimer has no cause of action against them because he is not the true owner of the truck.

The holding of the court of appeals that Petitioners' conduct in returning the truck was not reasonable as a matter of law is thus necessarily in conflict with the earlier application of Texas law by another panel of the same court.

5. The court of appeals erred in reversing the jury's verdict, in rendering judgment as a matter of law that the officers' subjective good faith was not reasonable and in remanding the case for a determination of damages incurred after January 8, 1973.

The court held, in effect, that there was a conflict in substantial evidence so as to create a question for the jury on the issue of the officers' subjective good faith

in the legality of their actions and did not reverse the jury's verdict for the officers as to that portion of their defense.

The court stated that the second criterion of the "good faith-reasonable belief" test is that the objective circumstances surrounding Petitioners' actions must have been such that their subjective good faith was reasonable. Petitioners assert that the assessment of the reasonableness of their conduct in light of the surrounding circumstances presents a factual question for the jury.

The court cited no authority for its reversal of the jury verdict *as a matter of law* on the issue of reasonableness. In effect, it held (with one Justice dissenting) that there was no conflict of substantial evidence which would create a jury question and that "*all* the evidence" leads to the conclusion that the "continued barrier to Reimer's possession of the truck was an unreasonable deprivation of *his* property." (Emphasis added)

The court emphasized Petitioners' failure to return the truck quickly, the long wait Reimer testified he suffered in the Police Department hallway, and Petitioners' assertion they could not read the signature on the order. (The script signature is reproduced in Appendix G, *infra.*)

As the court noted, in reversing a jury verdict on appeal, *all* the evidence must be considered in the light most favorable to the party receiving the favorable jury verdict. If there is substantial evidence to the contrary of such quality and weight that reasonable and fair-minded men might reach different conclusions, the jury verdict may not be reversed. *Boeing Co. v. Shipman*, 411 F.2d 365 (5th Cir. 1969).

Petitioners argue that a jury question as to the reasonableness of their conduct was created by substantial evidence, some of which the court failed to acknowledge in its opinion: Although the court mentioned the theft charges filed against Reimer, it made no mention of the date of the indictment returned against him—the day after the district court entered its order granting Reimer's "Motion for Return of Seized Property and Suppression of Evidence" and a few days before Reimer presented the order at police headquarters.

The reasonableness of Petitioners' conduct is even more apparent in light of the discrepancy in the description of the truck contained in the order (1970 versus 1972 Ford), the initial confusion in the City of Houston's Legal Department when Petitioners consulted them over the meaning of the minute entry and the filing of Petitioners' Motion to Vacate a short time later.

Moreover, the holding of the court of appeals as to reasonableness is clearly inconsistent with its own conclusion that the officers "could well have believed" the truck was contraband when they seized it. There is no evidence in the record which later should have led Petitioners to conclude that the truck belonged to Reimer. Indeed, at the time Reimer presented the copy of the minute entry, they had even more reason to believe the truck was stolen than at the time of the original seizure. In short, even if Reimer's subsequent criminal conviction had not confirmed Petitioners' belief, their subjective good faith cannot be deemed unreasonable by the court's own reasoning. At the very least, the issue of reasonableness was a question for the jury, and the reversal of its verdict for Petitioners was error.

It is respectfully submitted that the court of appeals' concern for prompt compliance with the district court's minute entry caused it to overlook the substantial evidence favorable to the Petitioners.

Finally, the court's holding assumes that Petitioners, who were low-ranking officers in the police department, had the authority to release the truck. Petitioners submit that it was for the district court to decide whether the officers were in contempt of its order. The trial court's repeated refusal to hold them in contempt in itself indicates the reasonableness of Petitioners' actions and that the jury verdict was improperly reversed.

The court further erred in remanding a portion of the case for a determination of the damages due Reimer for deprivation of *his* property. In effect, the court held that a thief is entitled to damages for the deprivation of his ill gotten gains but failed to set forth a measure of damages appropriate in such an extraordinary circumstance. Petitioners assert that Reimer is not entitled to damages and, alternatively, that the court should have set forth a measure of damages in this unusual situation.

The court's holding as a matter of fact that the "stop order" put on the truck's title prevented the transfer of the vehicle is also in error. The court incorrectly assumes that one convicted of theft could pass title to a stolen vehicle. *McKinney v. Croan*, 144 Tex. 9, 188 S.W.2d 144 (1945); *Beauchamp v. Nichols*, 278 S.W.2d 535 (Tex. Civ. App.—Amarillo 1954, no writ). The holding is also contrary to the testimony of Mr. J. R. Honeycut, the Registration Supervisor of the Texas Highway Department's Motor Vehicles Division, who testified that the title application had been returned for additional

evidence of ownership. Mr. Honeycut also testified that a stop order alone would delay processing for only five days.

In the final alternative, the court erred in holding that Reimer was entitled to damages for deprivation of his property after January 8, *1973*, instead of January 8, *1974*. The court's own opinion and the record itself indicate that the truck was not seized until September 1973. This error is clearly the result of a mistake made on the district court's docket sheet soon after the beginning of the new year in 1974.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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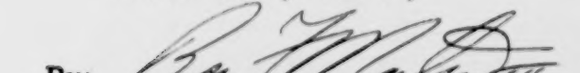
By: 

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CERTIFICATE OF SERVICE

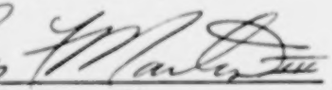
I, Roy F. Martin, III, Assistant City Attorney, Houston, Texas, counsel for Petitioners Tom Adams and J. W. DeFoor, do hereby certify that I have this 10th day of January, 1979, served three (3) true and correct copies of the enclosed Petition for Writ of Certiorari upon the Respondent, pro se:

Mr. Joe Reimer
P. O. Box 841
Channelview, Texas 77530

by depositing same in the United States mail, First Class postage prepaid, by Certified Mail, Return Receipt Requested.

I further certify that all parties required to be served have been served.

ROBERT M. COLLIE, JR.
City Attorney, City of Houston

By: 

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APPENDIX A

Opinion below by United States Court of Appeals for the Fifth Circuit in *Reimer v. Short.*

Case No. 15-1428

Opinion of August 21, 1978

Appeal from the United States District Court for the Southern District of Texas.

Before JONES, WISDOM and GODBOLD, Circuit Judges.

WISDOM, Circuit Judge:

Joe Reimer, the proprietor of an auto salvage business in Channelview, Texas, appearing pro se, brought this suit under 42 U.S.C. §§ 1981, 1982, 1983, and 1985 against the City of Houston, Houston's Chief of Police (Short), and two members of the Houston Police Department, Officers Adams and DeFoor. He alleges that during the summer of 1973, he was the victim of police harassment, unlawful searches of his business premises, and unlawful searches and seizure of his pickup truck. After the City of Houston and Police Chief Short were dismissed as defendants, the first trial of Reimer's civil rights action against Officers Adams and DeFoor ended in a mistrial before a deadlocked jury. At the second trial, the jury found for the defendant officers, and the district court entered judgment accordingly. On this appeal, Reimer raises eleven claims of error but essentially seeks three things: (1) the reversal of the jury's verdict for the defendant policemen in the civil rights action, (2) the reinstatement of the City of Houston and Police Chief Short as defendants, and (3) the reversal of a state conviction for theft of the pickup truck.

Reimer's vigorous pro se advocacy has borne some fruit. We reverse the jury verdict as to some of the actions of the defendant police officers, but affirm the district court on all other points.[1]

I

Reimer alleges that during the period from June 19, 1973 to September 10, 1973, Adams and DeFoor came to his salvage lot at least ten times to inventory the vehicles in his possession and check for stolen merchandise. All visits were made without warrants. Although the police officers contend that the searches were made with Reimer's consent, Reimer asserts that he never consented to them. He contends that the officers interfered with his business by telling customers they had "closed" the lot and circulating rumors that Reimer was selling stolen vehicles.

At about 3:00 A.M. on September 10, 1973, Adams noticed a truck bearing the license plate FK 9100 parked on the street. He remembered seeing that license number a few weeks earlier on a wrecked truck. Upon checking with state authorities, he learned that the license plate should have been on a truck with a vehicle identification number (VIN) different from that on the parked truck.

1. This case was argued on November 4, 1976. Reimer initially submitted only a partial transcript of the second trial. Because consideration of his contention that the evidence was insufficient to support a jury verdict required consideration of all the evidence, F. R. App. P. 10, we requested him to supplement the record. We granted Reimer several extensions because the court stenographer proved unable or was unwilling to provide a complete transcript. After Reimer filed a motion to show cause why the court reporter should not be held in contempt of this Court, the reporter completed the supplemental transcript, which was filed more than a year after the case was argued.

He set up a surveillance and impounded the truck when one Elton Brown, who had borrowed the truck from Reimer, attempted to drive it away. Later, Adams and DeFoor and others conducted a thorough inspection of the truck, disassembling it in a search for identification numbers. The officers did not obtain a warrant for either the seizure of the truck or the search while it was in police custody.

Reimer argued that the truck in question was his, having been reconstructed from three vehicles; a blue 1968 Ford, a green 1972 Ford (VIN F10GKP62670, with license FK 9100), and a red and white 1970 Ford (VIN F10GKH11749). He had documentation of title for the latter two vehicles, and maintained that under Texas law the FK 9100 license plate was the authorized one for the hybrid truck. His only proof of title with regard to the body portion of the vehicle was his own testimony that he once had the certificate of title but no longer had it because the police officers had taken it and were withholding it. The police maintained that except for the frame and a few other parts of the hybrid truck, the vehicle was a truck that was stolen from one John Hubbard. Hubbard identified the truck by informing the police of several minor details about it that only its owner would have known. Reimer asserts that this identification was the product of a conspiracy between the police and Hubbard and that another man had since been convicted for the theft of Hubbard's truck.

After the police filed charges against Reimer, but before his arrest and indictment, Reimer brought this civil rights action. On October 26, 1973, he filed a "Motion for the Return of the Seized Property and the Suppression of Evidence", which was granted in a default judgment

entered January 7, 1974 "insofar as it refers to one 1970 Ford pick-up truck with serial numbers F10GKH11749 and F10GKP62670". Reimer made much of this default judgment, even convincing a state judge at one point that it constituted an order binding the state court to suppress evidence of the truck in state criminal proceedings against him. A later amendment of the minute entry covering the judgment and a qualification in the minute entry itself make clear that the order, properly construed, was *only* an order directing the police to return the truck to Reimer. The proceeding was not an adjudication of Reimer's title to the truck nor a determination that the seizure and suppression claims were valid.

Despite the January 7, 1974 order to return the truck, the police did not return it until January 18, 1974 and returned it then only after Reimer filed a motion to show cause why they should not be held in contempt. The police returned the truck but retained its identification plate, making Reimer's possession of the truck technically illegal. The defendants finally returned this plate on August 23, 1974, in response to a second contempt motion Reimer filed. After returning the plate, however, the defendants placed a "stop" on the title of the truck, preventing the vehicle from being transferred. Reimer challenged this action with a third contempt motion, but that motion was denied,

After the conclusion of Reimer's civil rights action against the police, the state tried its auto theft charges against him. On March 25, 1975, a jury convicted Reimer of the theft of the Ford pickup truck. The Texas Court of Criminal Appeals, however, granted him a new trial on September 23, 1975, because of newly discovered evidence. Weary, so Reimer says, of his battle against

"City Hall" and the Houston Police Department, on March 1, 1976, he entered a plea of nolo contendere to a charge of misdemeanor auto theft. He received a thirty-day sentence. In addition to seeking a reversal of the judgment in his civil rights action, Reimer also challenges the disposition of the state criminal case against him on this appeal.

II

[1] We dispose of the challenge to the nolo contendere plea first. Reimer is attempting to challenge his plea of nolo contendere to a state criminal charge through an appeal of a federal civil rights action. This he cannot do. First, and most obviously, Reimer has never challenged the disposition of the state criminal charges in a federal district court, so there is no lower court order regarding the matter on which an appeal could be based. Consequently, this matter is not properly before us on appeal. Second, although Reimer's plea was one of nolo contendere rather than guilty, he is still challenging the fact or length of his confinement. The relief sought is thus habeas corpus in nature, and under *Preiser v. Rodriguez*, 1973, 411 U.S. 475, 93 S.Ct. 1827, 36 L.Ed.2d 439, Reimer must exhaust adequate state remedies before bringing suit for relief from his nolo contendere plea in federal district court.

[2] We next reach Reimer's contention that the district court erred in dismissing Police Chief Short and the City of Houston as defendant parties in the civil rights suit. The district court did not err in granting Police Chief Short's motion to dismiss him as a defendant after the conclusion of the plaintiff's case at the first trial. "[T]here is no evidence that he participated in, had

knowledge of, or was negligent with regard to the actions of the [policemen which were the subject of Reimer's complaint]".[2] *Anderson v. Nosser*, 5 Cir. 1971, 438 F.2d

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2. The only evidence of Short's involvement in the acts that gave rise to Reimer's civil rights suit was the following testimony given by Reimer at the first trial.

Q. During this period when you were trying to locate your automobile at the Houston Police Department, did you ever have any conversation with a man who was then Chief of Police, Mr. Herman Short?
A. No.
Q. Did you make any efforts to see Mr. Short?
A. Yes.
Q. What did you do?
A. I went up there.
Q. Went up where?
A. To the police department, which was located on Riesner Street. There was a gentleman down below that little desk, kind of like an information center. I asked him what I to do do to see Chief Short
Q. When was this, if you recall?
A. This was before they had seized the truck, but I couldn't put an exact date on it.
Q. This was before they seized the truck?
A. Yes, sir.
Q. Well, why were you going to see Chief Short at that time?
A. I wanted him to stop all this harrassment, these officers just coming out there and shaking my yard down all the time.
Q. All right. And did you get to see him?
A. I waited out in the hall. He wouldn't see no one. I waited out in the hall till—it was a little after noon. He came out in the hall with four or five other people that was along with him and I just broke into the line and told him everything.
Q. What did you tell him?
A. I told him I wanted all this stuff stopped, I was sick and tired of all this harrassment. I wanted these things stopped. These officers were outside the city limits of Houston. He told me, "I'm sure if my men are out there, they've got a good reason and I'm not going to do anything about it."
Q. And that was the extent of your conversation with Chief Short?
A. That was it because he kept walking.
Q. Did you ever have any other conversations with him, write him any letters, or anything?
A. I did not.

183, 199, modified on other grounds, 456 F.2d 835 (en banc), *cert. denied*, 409 U.S. 848, 93 S.Ct. 53, 34 L.Ed.2d 89 (1973). As this Court noted in *Anderson, quoting Jordan v. Kelly*, 1963, W.D.Mo. 223 F.Supp. 731, 739: "The chief of police would not be responsible for the wrongful acts of the officer unless he was present or unless it is shown he directed such acts or personally cooperated in them . . ." 438 F.2d at 199.

[3] As to the City of Houston, the district court applied *Monroe v. Pape*, 1961, 365 U.S. 167, 187-92, 81 S.Ct. 473, 5 L.Ed.2d 492, and found that the City of Houston was not "a person" for the purposes of § 1983.

. . . . .

Q. And can you tell us a little about this conversation with Chief Short? You say that this was around noon?
A. It was at noontime, yes, sir.
Q. And he was surrounded by several people or walking with a group of men?
A. Yes. sir.
Q. And you said that you kind of broke into the crowd?
A. Yes.

. . . . .

Q. And that was the only conversation you had with Chief Short?
A. That is it, yes.
Q. All right, sir. And what did you tell him, now?
A. I asked him why I was being harrassed and requested that this harrassment and illegal seizures and searches of my property be stopped.
Q. Did you explain what it was about?
A. No, because he just kept walking. I didn't have time.
Q. You just used the word, harrassed, and didn't say Adams or DeFoor were coming on your property?
A. I believe their names were mentioned to him, but I couldn't truthfully tell you that, Counsel.
Q. All right. And you didn't explain about the automobiles or anything like that?
A. No, sir.

Second Supplemental Record on Appeal, Testimony of Joe Reimer at 46-48, 90-92.

Although the court was correct at the time, the Supreme Court has since overruled that holding of *Monroe. Monell v. Department of Social Services of the City of New York* (1978), ____U.S.____, 98 S.Ct. 2018, 56 L.Ed.2d 611. The Supreme Court did not find cities liable to the same extent as any other employer.

> "On the other hand, the language of § 1983, read against the background of the same legislative history, compels the conclusion that Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort. In particular, we conclude that a municipality cannot be held liable *solely* because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory."

____U.S. at ____, 98 S.Ct. at 2036. As with Chief Short, there is no evidence that the City of Houston "acted" through its policies, formally or informally adopted, to deprive Reimer of his constitutional rights. Thus, because the only theory under which the City of Houston could be held liable is *respondeat superior,* the action was properly dismissed as to the City.

III

[4] We turn finally to Reimer's request that the jury's verdict for defendant officers Adams and DeFoor be reversed. Although he raises numerous claims of error as to the proceedings below, Reimer primarily asserts two grounds for overturning the jury's verdict: an improper charge to the jury and insufficiency of the evidence.

The district court instructed the jury that

> even if you find by a preponderance of the evidence that the plaintiff's civil rights have been violated in this case, should you find, by a preponderance of the evidence, that the defendants were at all times acting in good faith with a reasonable belief in the validity of their conduct, then you must find for the defendants.

Under this instruction, the defendant policemen could avail themselves of an affirmative defense of good faith only if two criteria—one subjective and one objective—were met. First, the defendant police officers had to show that they subjectively harbored a good faith belief that their actions were lawful; second, the objective circumstances surrounding their actions must have been such that their subjective good faith was reasonable. The court's instruction is a correct statement of the law. This can best be shown by discussing the applicability of the "good faith-reasonable belief" defense to the searches of the auto salvage yard and the impoundment of the truck separately.

The availability of a good faith defense to police officers defending § 1983 actions premised on allegedly illegal searches and seizures was first announced by the Supreme Court in *Pierson v. Ray,* 1967, 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d 228. The Court there held that where the police activity complained of involved an arrest, "the defense of *good faith and probable cause* . . . available to the officers in the common-law action for false arrest and imprisonment, is also available to them in [an] action under § 1983". (Emphasis added.) *Cf. Procunier v. Navarette,* 1978, ____U.S.____, 98 S.Ct. 855, 55 L.Ed.2d 24 (extending a good faith defense to

prison officials).[3] Subsequently, several courts of appeals, led by the Second Circuit in *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 2 Cir. 1972, 456 F.2d 1339, on remand, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619, decided that the probable cause requirement of a police officer's good faith defense to a § 1983 action is not the same as the probable cause that is constitutionally required to validate searches and seizures in a criminal proceeding.[4] *Hill v. Rowland*, 4 Cir. 1973, 474 F.2d 1374; *Jones v. Perrigan*, 6 Cir. 1972, 459 F.2d 81. These Courts held that in a § 1983 action against a police officer based upon searches and seizures he committed in the circumstances of an arrest, "it is a defense to allege and prove *good faith and reasonable belief* in the validity of the arrest and search and

3. In *Procunier* the Supreme Court categorized the two branches of good faith immunity as requiring the plaintiff to prove either that the defendant knew or should have known that he was violating the plaintiff's rights, or that the defendant acted with some malicious intention. Although that statement is phrased differently from our Court's objective/subjective standard, the substantive differences, if any, are not relevant to this case.

4. The district court charged the jury to this effect:
In considering whether or not the defendants are liable to the plaintiff in this case, you are asked to determine whether or not the defendants acted in good faith with a reasonable belief in the validity of their acts. A policeman or other official may commit a variety of acts which in the course of a criminal trial might be found to be in violation of the civil rights of the accused person. In a civil case in which a policeman is sued for damages, however, he will not be held to the same standard to which he is held in a criminal case. He is not expected to predict whether or not a judge will hold as a matter of law that he did not have "probable cause" to act as he did under the circumstances. Rather, he will have a complete defense to his actions if he can show that, under the circumstances and acting as an ordinary and prudent policeman, he acted in good faith and it was reasonable for him to have believed that his actions were lawful.

in the necessity for carrying out the arrest and search in the way the arrest was made and the search was conducted". *Bivens v. Six Unknown Agents*, 456 F.2d at 1348 (emphasis added); *Hill v. Rowland*, 474 F.2d at 1377; *Jones v. Perrigan*, 459 F.2d at 83.

Because the searches by Adams and DeFoor of Reimer's auto yard were not incident to any arrest, *Bivens* and the cases approving it are not directly applicable. In *Laverne v. Corning*, 2 Cir. 1975, 522 F.2d 1144, however, the court held that the "good faith-reasonable belief" defense is available to public officials sued under § 1983 for performing searches not directly incident to an arrest. In *Laverne*, the Mayor, Deputy Mayor, Building Inspector, and other officials of Laurel Hollow, Long Island were sued under the Civil Rights statutes for performing a series of searches of the plaintiff's property that led to a criminal prosecution for violating both the Village zoning ordinance and a previously obtained injunction. The plaintiffs advanced two reasons for distinguishing prior cases including *Woods v. Strickland*, 1975, 420 U.S. 308, 95 S.Ct. 992, 43 L.Ed.2d 214 and *Scheuer v. Rhodes*, 1974, 416 U.S. 232, 94 S.Ct. 1038, 40 L.Ed.2d 90, upholding the "good faith-reasonable belief" defense to suits based on official acts. First, they urged that *Pierson and Monroe v. Pape*, 1961, 365 U.S. 167, 187, 81 S.Ct. 473, 484, 5 L.Ed.2d 492, 505, require that § 1983 "be read against the background of tort liability", and good faith is not a defense to the closest common law tort analogue—trespass. Second, they argued that *Wood, Scheuer, Pierson*, and *Bivens* all involved officials required under the circumstances to think and act quickly. The *Laverne* Court rejected both arguments. Although the defendants in *Laverne* were execu-

tive officials of a locality rather than policemen, they were sued for performing investigatory activities routinely performed by police officer. We agree with the Second Circuit that a police officer's reasonable good faith belief that his actions are lawful and within the scope of his authority is an affirmative defense to a § 1983 action based on searches performed by the policeman not directly incident to an arrest. Indeed, a contrary holding might encourage policemen to arrest first and search later in a misguided attempt to avoid civil liability. Furthermore, the approval of the "good faith-reasonable belief" defense to non-arrest § 1983 actions against policemen that we make explicit today was implicit in our decision in *Rodriguez v. Jones*, 5 Cir. 1973, 473 F.2d 599. *See also Fisher v. Volz*, 3 Cir. 1974, 496 F.2d 333, 348 n. 27.

With respect to § 1983 actions premised on the seizure and retention of personal property by the police—such as the prolonged impoundment of Reimer's truck by Adams and DeFoor here—our *en banc* decision in *Bryan v. Jones*, 5 Cir. 1976, 530 F.2d 1210, requires that police officers be permitted a reasonable good faith defense. In *Bryan*, we held that when a plaintiff sues his jailer under § 1983 for keeping his illegally imprisoned, "a defense of official immunity is available to a jailer who has acted in reasonable good faith". 530 F.2d at 1214. Although it is questionable whether the common law affords a police officer who has committed a trespass to a chattel or a conversion the defense of reasonable good faith, we permitted the reasonable good faith defense in *Bryan*.[5] It would be anomalous to allow a reasonable

5. Section 265 of the Restatement (Second) of Torts (1965), for example, provides:

> One is privileged to commit an act which would otherwise be a trespass to a chattel or a conversion if he is acting to discharge

good faith defense to an official responsible for depriving a plaintiff of his personal liberty and not avail that defense to one responsible for depriving an individual of his personal property. The district court properly instructed the jury on the police officer's good faith defense to both the search and the impoundment.

[5] Reimer argues that the evidence was insufficient to support the jury's conclusion that the officers acted in good faith. We can reverse the jury's verdict only if the district court erred in not granting Reimer's motions for a directed verdict and for judgment notwithstanding the verdict. 5 Moore's Federal Practice ¶ 38.08[5], at 89. The standard for granting these motions was set out by this Court in *Boeing Company v. Shipman*, 5 Cir. 1969, 411 F.2d 365 (en banc).

> On motions for directed verdict and for judgment notwithstanding the verdict the Court should consider all of the evidence—not just that evidence which supports the non-mover's case—but in the light and with all reasonable inferences most favorable to the party opposed to the motion. If the facts and inferences point so strongly and overwhelmingly in favor of one party that the Court believes that reasonable men could not arrive at a contrary verdict, granting of the motions is proper. On the other

> of a duty or authority created by law to preserve the public safety, health, peace, or other public interest, and his act is reasonably necessary to the performance of his duty or the exercise of his authority.

Comment (a) to § 265, however, explains:

> It is beyond the scope of this Restatement to state when an officer . . . is under a duty to act, or is authorized to act. Particular statutes may authorize him to act when he reasonably believes it to be necessary. Other statutes may be construed to give the authority only when there is actual necessity. If he is found to be authorized, the rule stated in this Section applies.

> hand, if there is substantial evidence opposed to the motions, that is, evidence of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach different conclusions, the motions should be denied, and the case submitted to the jury. A mere scintilla of evidence is insufficient to present a question for a jury. The motions for directed verdict and judgment n. o. v. should not be decided by which side has the better of the case, nor should they be granted only when there is a complete absence of probative facts to support a jury verdict. There must be a conflict in substantial evidence to create a jury question.

411 F.2d at 374-75.

[6] After reviewing the record, we conclude that, for most of Reimer's claims, this is not a case in which "the facts and inferences point so strongly and overwhelmingly in favor of one party that . . . reasonable men could not arrive at a contrary verdict . . ." The parties introduced directly conflicting evidence concerning the frequency, intrusiveness, and consensual nature of the officers' searches of Reimer's yard. A reasonable jury could have held for the officers, not only on the issue of good faith but on the question whether any violation at all had occurred. Similarly, the evidence presented shows that the officers could well have believed the truck to have been stolen, and was contraband, when they seized it in September 1973.

[7] On one point, however, the jury did exceed the bounds of reason. The defendants' actions after January 7, 1974, cannot be said to have been in good faith. On October 26, 1973, Reimer filed a motion in federal court

for return of his truck. The district court granted this motion on January 7. Reimer took the order granting his motion to the police department the next morning. There he was told that "they couldn't read the Judge's signature" and therefore, were not going to honor it. After asking for time to consult the City Attorney, the defendants made Reimer wait in the hall for five hours. A Mr. Storemski finally told Reimer that afternoon that they were not going to release his truck. Ten days later, and only after Reimer served the defendants with a motion to show cause why they should not be held in contempt, the truck was released. Third Supp. Record, 222-28. Even then, the police would not release to Reimer the vehicle's identification plate. This made possession of the truck by Reimer technically illegal. The plate was not returned until August 23, 1974, the scheduled date of argument on Reimer's second contempt motion concerning that plate. His possession of the truck was still uncertain, for the defendants put a "stop" on the title to the truck, preventing it from being transferred.

From the record, it seems clear that Officers Adams and DeFoor decided Reimer had stolen the truck, then set out to prove it. Until confronted with a court order, the jury could reasonably find that they had acted in good faith, subjectively and objectively. After that order was served, while their actions may still have been from good motives, that good faith could not have been reasonable. All the evidence leads to the conclusion that this continued barrier to Reimer's possession of the truck was an unreasonable deprivation of his property.

IV

Except for the deprivation of property after January

8, 1973, the judgment below is AFFIRMED. With respect to the actions after that date, the judgment is REVERSED and the case REMANDED for determination of damages.

JONES, Circuit Judge, dissenting:

The question of the good faith of the officers should be, I think, submitted to a jury.

I dissent.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 75-1428

JOE REIMER, Plaintiff-Appellant,

v.

HERMAN SHORT, Chief of Police, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court
For the Southern District of Texas

Judgment Entered August 21, 1978

Before JONES, WISDOM and GODBOLD, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Texas, and was argued by counsel:

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed in part and reversed in part; and that this cause be and the same is hereby remanded in part to the said District Court in accordance with the opinion of this Court;

It is further ordered that costs on appeal be taxed equally against plaintiff-appellant and defendants-appellees by the Clerk of this Court.

AUGUST 21, 1978

JONES, Circuit Judge, dissenting.

ISSUED AS MANDATE: October 27, 1978

APPENDIX C

PETITIONERS' REQUEST FOR EXTENSION OF TIME IN WHICH TO FILE MOTION FOR REHEARING

JOE REIMER, Plaintiff-Appellant,

v.

HERMAN SHORT, et al, Defendants-Appellees.

Filed September 5, 1978 in Case No. 75-1428

In the United States Court of Appeals, Fifth Circuit

APPELLEES' REQUEST FOR EXTENSION OF TIME IN WHICH TO FILE MOTION FOR REHEARING

To The Honorable United States Court of Appeals:

Appellees herein request extension of time until 5 p.m., September 11, 1978, for filing of their Motion for Rehearing in the above entitled and numbered cause.

Appellees' counsel was out of the United States on the day the opinion of the Court was handed down and did not return to office until 6 a.m., September 5, 1978, which is the last day for filing of Motion for Rehearing. Counsel cannot possibly prepare and deliver Motion for Rehearing to New Orleans today.

Appellees have good grounds for rehearing and this request is in order that justice may be done.

/s/ JOSEPH G. ROLLINS
Joseph G. Rollins

429 City Hall
Houston, Texas 77002
713/222-5151
Counsel for Appellees

CERTIFICATE OF SERVICE

We, Herman Short, et al, Appellees herein, hereby certify that a true and correct copy of this Appellees' Request for Extension of Time in Which to File Motion for Rehearing was served upon Appellant Pro Se, Mr. Joe Reimer, by depositing the same in the United States mail, by Certified Mail, Return Receipt Requested, postage prepaid, this the 5th day of September, 1978.

/s/ JOSEPH G. ROLLINS
Joseph G. Rollins

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

EXTENSION OF TIME TO FILE
PETITION FOR REHEARING

Entered September 5, 1978

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 75-1428—JOE REIMER v. HERMAN SHORT, ETC., ET AL.

Gentlemen:

The following action has this day been taken in the above case:

(XX) An extension of time has been granted *to and including September 11, 1978**

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* MUST BE PHYSICALLY FILED IN THIS OFFICE BY THIS DATE.

( ) for filing and docketing record on appeal.
( ) for filing appellant's printing designation.
( ) for filing appellee's printing designation.
( ) for filing copies of the reproduced appendix.
( ) for filing appellant's brief.
( ) for filing appellee's brief.
( ) for filing reply brief.
(XX) for filing a petition for rehearing. (Appellees)
( )
( )

( ) Order enclosed has been entered.

cc: Mr. Joseph G. Rollins
Mr. Joe Reimer

cc: Hon. John Minor Wisdom

Very truly yours,

Edward W. Wadsworth, Clerk

By /s/ JULIE DOLESE
Deputy Clerk

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 75-1428

ORDER DENYING PETITIONS FOR REHEARING

Entered October 18, 1978

JOE REIMER,
Plaintiff-Appellant

versus

HERMAN SHORT, Chief of Police, ET. AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Texas

ON PETITIONS FOR REHEARING

(October 18, 1978)

Before JONES, WISDOM and GODBOLD, Circuit Judges

PER CURIAM:

IT IS ORDERED that the petitions for rehearing filed in the above entitled and numbered cause be and the same are hereby denied.

ENTERED FOR THE COURT:

/s/ JOHN MINOR WISDOM
United States Circuit Judge

APPENDIX F

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. 73-H-1400

JOE REIMER

v.

HERMAN SHORT, TOM ADAMS, J. W. DEFOOR

MINUTE ENTRY

Plaintiff's "Motion for the Return of Seized Property and the Suppression of Evidence," insofar as it refers to one 1970 Ford Pick-up Truck with serial numbers F10GKH11749 and F10GKP62670 taken from 4413 Dunn St., Houston, Texas, on September 10, 1973, by one Tom Adams, is granted. Defendants have failed to advise the court of any reason why they continue to hold said truck. In all other respects the motion is denied.

/s/ JOHN V. SINGLETON, JR.
United States District Judge

January 7, 1974

APPENDIX G

SCRIPT SIGNATURE OF
HON. JOHN V. SINGLETON, JR.
AS IT APPEARS ON
THE MINUTE ENTRY
DATED JANUARY 7, 1974.